SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

Hon. Dianne T. Renwick, Justice Presiding,
Sallie Manzanet-Daniels
Angela M. Mazzarelli
Jeffery K. Oing
Peter H. Moulton, Justices.

In the Matter of Michael D. Cohen,
(admitted as Michael Dean Cohen),
an attorney and counselor-at-law:

Attorney Grievance Committee for the First Judicial Department, Petitioner, M-4981 M-6557

Michael D. Cohen, Respondent.

Disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department. Respondent, Michael D. Cohen, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the Second Judicial Department on June 24, 1992.

Jorge Dopico, Chief Attorney,
Attorney Grievance Committee, New York
(Raymond Vallejo, of counsel), for petitioner.

Respondent pro se.

Motion Nos. 4981 and 6557 - January 14, 2019

IN THE MATTER OF MICHAEL D. COHEN, AN ATTORNEY

PER CURIAM

Respondent Michael D. Cohen was admitted to the practice of law in the State of New York by the Second Judicial Department on June 24, 1992 under the name Michael Dean Cohen. At all times relevant to this proceeding respondent maintained his principal place of business within the First Judicial Department.

In August 2018, respondent pled guilty to tax evasion, making false statements to a federally insured bank and campaign finance violations. By motion dated October 3, 2018, the Attorney Grievance Committee (Committee) moved for an order striking respondent's name from the roll of attorneys on the ground that he has been disbarred based upon his conviction of a felony, or, in the alternative, determining that the crimes of which he has been convicted constitute "serious crimes."

While the October motion was sub judice, on November 29, 2018, in a separate prosecution, respondent pled guilty to making false statements to the United States Congress. On December 12, 2018, respondent was sentenced on both convictions. By letter to this Court dated December 5, 2018, the Committee

advised that it intended to file a supplemental motion to strike based upon this second conviction and asked this Court to hold in abeyance the consideration of the Committee's previously filed motion and consolidate the two motions in the interest of judicial economy.

Accordingly, by motion dated December 19, 2018, the Committee asks for the same relief as the first motion, i.e. to strike respondent's name from the roll of attorneys based upon his second conviction, or, in the alternative, determining that the crimes of which he has been convicted constitute "serious crimes."

Respondent agreed to be served with both of these motions by email, first class mail and certified mail, return receipt requested. He has failed to submit responses.

On August 21, 2018, respondent pled guilty in the United States District Court for the Southern District of New York to evasion of assessment of income tax liability in violation of 26 USC § 7201 (five counts - for the calendar years 2012-2016); making false statements to a financial institution in connection with a credit decision in violation of 18 USC §§ 1014 and 2; causing an unlawful corporate contribution in violation of 52 USC §§ 30118(A) and 30109(d)(1)(A), and 18 USC § 2(b); and making an excessive campaign contribution in violation of 52 USC §§ 30116(a)(1)(A), 30116(a)(7) and 30109(d)(1)(A), and 18 USC §

2(b), all federal felonies.

On November 28, 2018, respondent pled guilty in the United States District Court for the Southern District of New York to making false statements to the United States Congress in violation of 18 USC § 1001(a)(2).

On December 12, 2018, respondent was sentenced to three years in prison based upon his first conviction, a two-month concurrent sentence for his second conviction, concurrent three-year terms of supervised release in both cases, and was ordered to pay two fines of $50,000 each, to forfeit $500,000 and to pay $1,393,858 in restitution to the IRS.

By motion dated December 19, 2018, the Committee seeks an order striking respondent's name from the roll of attorneys pursuant to Judiciary Law § 90(4)(a) and (b) and the Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.12(c)(1) on the grounds that he was automatically disbarred as a result of his conviction of a federal felony that would constitute a felony under New York law (Judiciary Law § 90[4][e]). In the alternative, the Committee seeks an order determining that the crime of which respondent has been convicted constitutes a "serious crime" within the meaning of Judiciary Law § 90(4)(d), immediately suspending him from the practice of law pursuant to Judiciary Law § 90(4)(f) and 22 NYCRR 1240.12(b)(2), and directing him to show cause, following his release from

imprisonment, why a final order of censure, suspension or disbarment should not be made pursuant to 22 NYCRR 1240.12(c)(2)(i).

A conviction of a federal felony triggers disbarment by operation of law if the offense would constitute a felony if committed under New York law (Judiciary Law § 90(4)(e); *Matter of Rosenthal*, 64 AD3d 16, 18 [1st Dept 2009]; *Matter of Kim*, 209 AD2d 127, 129 [1st Dept 1995]). The federal felony need not be a "mirror image" of the New York felony in that it does not have to correspond in every detail, but it must be "essentially similar" (*Matter of Margiotta*, 60 NY2d 147, 150 [1983]; *Matter of Shubov*, 25 AD3d 33 [1st Dept 2005]). Even where the elements of the foreign jurisdiction's statute do not directly correspond to a New York felony, essential similarity may be established by admissions made under oath during a plea allocution, considered in conjunction with the indictment or information (*Matter of Amsterdam*, 26 AD3d 94 [1st Dept 2005]).

As noted, on November 29, 2018, respondent pled guilty to making false statements to the United States Congress in violation of 18 USC § 1001(a)(2). Respondent served on several matters as an attorney to President Donald Trump, when the latter was CEO of the Trump Organization. Respondent was charged in connection with his appearances before the Senate Select Committee on Intelligence (SSCI) and the House Permanent

Select Committee on Intelligence. Specifically, it was alleged, and respondent expressly admitted at his plea, that on or about August 28, 2017, he knowingly and willfully made a materially false and fraudulent statement and representation, namely, he caused to be submitted a written statement to SSCI containing material false statements about: (1) the Moscow Project (a proposed Trump Organization real estate project in Moscow, Russia), (2) discussions with people in the Trump Organization and in Russia about the Moscow Project, and (3) contemplated travel to Russia in connection with the Moscow Project.

The Committee contends that respondent was automatically disbarred because respondent's conviction under 18 USC § 1001(a)(2) (making false statements to the U.S. Congress), if committed in New York, would constitute the felony of offering a false instrument for filing in the first degree in violation of Penal Law § 175.35 (*Matter of Verzani*, 131 AD3d 49 [1st Dept 2015]; *Matter of Hidetoshi Cho*, 77 AD3d 155 [1st Dept 2010]).

18 USC § 1001(a)(2) provides:

> "whoever, in any matter within the jurisdiction of the ... Government of the United States, knowingly and willfully... makes any materially false, fictitious, or fraudulent statement or representation" is guilty of a felony.

New York Penal Law § 175.35(1), offering a false instrument for filing in the first degree, declares it is a class E felony when a person:

> "knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, ... offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation."

"The core of the offense under both statutes is the willful filing in a governmental office of a false statement knowing it to be false" (*Matter of Chu*, 42 NY2d 490, 494 [1977]). As this Court found in *Matter of Silverblatt* (113 AD2d 1, 2 [1st Dept 1985]) "[i]t is beyond cavil that a conviction for making a false statement under 18 USC § 1001 is cognizable as a felony under New York law for purposes of the automatic disbarment statute." Indeed, this Court has repeatedly held that a conviction under 18 USC § 1001 is analogous to a conviction under the New York felony of offering a false instrument for filing in the first degree and, therefore, automatic disbarment is appropriate herein (*see Matter of Stewart*, 42 AD3d 59 [1st Dept 2007]; *Matter of Ramirez*, 7 AD3d 52 [1st Dept 2004]; *Matter of Fier*, 276 AD2d 17 [1st Dept 2000]).

In light of the above, we need not address the issue of whether respondent's earlier conviction for making false statements to a financial institution in connection with a credit decision (which forms the basis of the Committee's first

motion to strike) is analogous to a New York felony (*see Matter of Dickstein*, 105 AD3d 77, 80 [1st Dept 2013]).

Accordingly, as respondent ceased to be an attorney upon his federal conviction of making false statements to the United States Congress in violation of 18 USC § 1001(a)(2), the Committee's motion should be granted to the extent of striking respondent's name from the roll of attorneys and counselors-at-law in the State of New York, nunc pro tunc to November 29, 2018. The Committee's first motion (M-4981) is denied as moot.

All concur.

Order filed. [February 26, 2019]

Motion (M-6557) is granted to the extent that respondent's name is stricken from the roll of attorneys and counselors-at-law in the State of New York pursuant to Judiciary Law § 90(4)(a) and (b) and 22 NYCRR 1240.12(c)(1), effective nunc pro tunc to November 29, 2018, the date respondent ceased to be an attorney as a result of his conviction of the crime of making false statements to Congress in violation of 18 USC § 1001(a)(2), a federal felony. Motion (M-4981) is denied as moot.